IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4697 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KHUSHALBHAI MAVAJI MARWADI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4697 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 26/06/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of

detention dated 12.2.2002 passed against him by the Police Commissioner, Vadodara City in exercise of the powers conferred on him by Section 3(2) of The Gujaarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. According to the detaining authority, the petitioner detenu is a "dangerous person" within the meaning of Section 2(c) of the PASA Act and, therefore, he is required to be detained.

2. The grounds for detention enclosed with the intimation attached to the detenu dated 12.2.2002 (Annex.B Page 19) indicates that the petitioner was found involved in four different criminal cases registered with three different police stations of Vadodara city. I would like reproduce the table reflected in Annex.B :-

Sr. No.	Police Station CR No.	Sections & time of offence	Date	Weapon
1.	Karelibagh I.176/2000 B.P.Act 135	IPC 323,324, 504,336,114	28.6.2000 14.00 Hrs. to 14.15 Hrs.	Sward
2.	Vadodara City I.17/2001	IPC 504, 114 B.P.ACt 135	19.1.2001 21.30 Hrs.	Stick
3.	Sayaji Gunj II.195/2001	Arms Act 25(1) (B)(A), BP Act135	5..11.2001 23.30 Hrs.	Country made Tamancha & 3 live Cartridge
4.	Vadodara City I.22/2002	IPC 393	26.1.2002 0.30 Hrs.	-

3. The subjective satisfaction recorded by the detaining authority is mainly based on registration of four different offences and three other unregistered offences occurred on 27.12.2001, 12.1.2002 and 20.1.2002 respectively. On 26.1.2002, the petitioner was found involved in the offence punishable under Section 393 of IPC registered at Vadodara City Police Station being I.CR. NO. 22/2002.

4. Ld. counsel appearing for the petitioner Ms. Kachhavah has submitted that the order of detention is bad in law on various grounds. She has taken me through the grounds mentioned in the memo of the petition.

However, she has focussed her submissions mainly on one ground whereby she has submitted that even if for the sake of arguments it is accepted that the petitioner is found involved in four offences as aforesaid, even than the activities of the petitioner cannot be said to be adverse to the "public order" and he ought not to have been branded as "dangerous person" within the meaning of PASA Act. She has also pointed out that first offence registered against the detenu was on 28.6.2000 for the offence punishable under Sections 323, 324, 504, 336, 114 of IPC etc. and even as per the papers of investigation, it is a cross-case of the offence registered as I.CR No. 177/2000 with Karelibagh Police Station on the strength of cross-complaint filed by the detenu. Copy of the FIR of the cross-case served to the detenu is on page 120 of the compilation which indicates that the rival group was found responsible for the offence punishable under Section 324 etc. of IPC by the investigating agency. The 2nd offence registered against the detenu is I.17/2001 with Vadodara City police station on 19.1.2001 for the offence punishable under Section 504, 114-B of IPC. Co-accused has not been detained by the Police Commissioner. The third offence registered against the detenu is II.CR NO. 195/2001 with Sayaji Gunj Police Station for the offence punishable under Section 25(1) of the Arms Act, but the plain reading of the FIR available on record indicates that weapon i.e. country-made tamancha was found from the possession of the co-accused namely Mr. Naresh Bhogilal Solaki and not from the custody of the present petitioner. So, on account of such three offences, on cannot be branded as "dangerous person". Registration of some criminal offences may affect adversely to the "law and order", but not the "public order". The last offence registered against the detenu is on 26.1.2002 being I.CR No. 22/2002 with Vadodara City Police Station which is serious offence committed around midnight where the petitioner has tried to snatch away gold chain from a passer-bye. On the strength of this solitary incident, which can be said to be grave so far as "law & order" and "public order" is concerned, but the detaining authority ought to have inferred that incident itself would not affect the "public order".

5. It is submitted that for the sake of argument even if it is accepted that the detenu has been involved in aforesaid cases, even than such activities can be said to be detrimental to the "law and order" and not to the "public order" as defined under the PASA Act. I have considered the submissions of ld. AGP Mr. A.Y. Kogje for the State. However, in view of the ratio of the

decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki v/s Police Commissioner, Surat & Ors., reported in 2000(1) GLR P.816, the say of the ld. counsel for the petitioner shall have to be accepted. In the cited case, the detenu Ashok Jivraj was found involved in four different criminal cases and all these cases were offences against the body of a person. There were statements of independent witnesses against the detenu. By referring the decision of Mustakmiya Jabbarmiya Shaikh v/s M.M. Mehta, Commissioner of Police & Ors., reported in 1995(2) GLR 1268 (SC) and the ratio of the decision of Arun Ghosh v/s State of West Bengal, reported in 1970(1) SCC P.98, it has been observed that the stray incidents would not affect the public order and the order of detention cannot be passed in such cases. In the cited decision, this Court has also observed that "looking to the incident, the case falls under the maintenance of law and order and not the public order". On facts, when court reaches to a conclusion that the case falls under the maintenance of law and order and not the public order, the subjective satisfaction arrived at by the detaining authority does not remain valid. Unless it is found that the case falls in the category of the activities adversely affecting the public order, the detaining authority has no jurisdiction to pass the order of detention. The order of detention under challenge, therefore, cannot sustain. Other grounds assailing the validity and legality of the order is not required to be discussed as the order of detention cannot be sustained on the sole ground canvassed by ld. counsel for the petitioner.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 12.2.2002 passed by Police Commissioner, Vadodara City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
Direct Service is permitted.

26-6-2002 [C. K.BUCH, J]
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